



4312-52

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-DEWA-25798; GPO Deposit Account 4311H2]

RIN 1024-AE46

Delaware Water Gap National Recreation Area; Removal of Outdated Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule removes special regulations for Delaware Water Gap National Recreation Area about rock climbing and commercial vehicles that are no longer necessary.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background.

Delaware Water Gap National Recreation Area (the recreation area) is the largest natural area in the National Park System between Virginia and Maine and one of the largest protected natural areas in the metropolitan corridor extending from Washington, DC, to Boston, MA. Located near the New York City and Philadelphia metropolitan areas, and easily accessible by private vehicle, the recreation area offers a variety of recreational opportunities. These include

hiking, swimming, fishing, hunting, boating, pleasure driving, and sight-seeing; learning about natural and cultural history; and enjoying the solitude of a rural environment and a change of pace. The waters of the Middle Delaware National Scenic & Recreational River are of exceptional quality. The 125 miles of the Delaware River that includes the Upper Delaware National Scenic & Recreational River, Delaware Gap National Recreation Area (Middle Delaware), and the Lower Delaware National Wild & Scenic River are classified as Special Protection Waters which have exceptionally high scenic, recreational and ecological values. The free-flowing Delaware River cuts through a narrow valley, and the adjacent lands contain streams and waterfalls, geologic features, a variety of plants and wildlife, and cultural resources. The National Park Service (NPS) administers the lands and waters within the recreation area to provide outdoor recreation opportunities while conserving the natural, cultural and scenic resources of the recreation area. In so doing, the NPS works cooperatively with surrounding communities and the public to achieve the conservation goals of the Delaware River region.

Regulatory Reform Initiative.

On February 24, 2017, President Trump issued Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” This Executive Order established a regulatory reform initiative to alleviate unnecessary burdens placed on the American people. As part of the Department of the Interior’s approach for implementing this initiative, the NPS is reviewing its regulations in order to identify those that should be repealed, replaced, or modified. These include regulations that are outdated or unnecessary.

Final Rule.

The NPS has identified several special regulations applicable to the recreation area that are outdated and no longer enforced by the NPS. The NPS is removing these regulations to

reduce a potential source of confusion for the public about what activities are allowed within the recreation area. These regulations are codified in 36 CFR 7.71(c)–(e) and address rock climbing and commercial vehicles.

Paragraph (c) requires visitors to register with the Superintendent prior to technical rock climbing. For the program to function properly climbers would register with the NPS prior to a climb, and then notify the NPS when the climb had safely concluded. The NPS found that the registration requirement triggered search missions that often were unfounded or unnecessary, because this registration system was not used properly by the public. As a result, the NPS determined that the costs associated with the program outweighed any potential benefits to public safety from its implementation. The registration requirement for technical rock climbing was operationally eliminated more than 25 years ago and has not been enforced since.

Paragraphs (d) and (e) identify the types of commercial vehicles that may be operated within DEWA and establish a fee schedule for those vehicles. The legislation authorizing the regulations about commercial vehicles has expired and was replaced in 2018 with a new Congressional authorization, Pub. Law 115-101 (January 8, 2018), that authorized the Superintendent to establish a fee and permit program. Commercial vehicle rules will now be published in the Superintendent's Compendium, which is available on the park's website at www.nps.gov/dewa. In order to reduce ambiguity in NPS regulations about the use of commercial vehicles within DEWA, this rule will state that, notwithstanding the general prohibition of commercial vehicles in 36 CFR 5.6, commercial vehicles are allowed in DEWA in accordance with applicable law. This rule will also state that the Superintendent will notify the public about rules related to commercial vehicles, including the requirements of the fee and permit program, using the methods set forth in 36 CFR 1.7.

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review(Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771).

This rule is not an E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The

RFA does not apply to this final rule because the National Park Service is not required to publish a proposed rule for the reasons explained below with regard to the Administrative Procedure Act.

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Administrative Procedure Act (Notice of Proposed Rulemaking and Effective Date).

We recognize that under 5 U.S.C. 553(b) and (c), notice of proposed rules ordinarily must be published in the Federal Register and the agency must give interested parties an opportunity to submit their views and comments. We have determined under 5 U.S.C. 553(b) and 318 DM HB 5.3, however, that notice and public comment for this rule are not required. We find good cause to treat notice and comment as unnecessary. As discussed above, the regulatory provisions being removed are outdated, unnecessary, and no longer enforced by the NPS. Maintaining these regulations is potentially confusing for the public. These regulatory changes will not benefit from public comment, and further delaying them is contrary to the public interest.

We also recognize that rules ordinarily do not become effective until at least 30 days after their publication in the Federal Register. We have determined, however, that good cause exists for this rule to be effective immediately upon publication for the reasons stated above.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and

recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act.

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and Recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set

forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. Amend § 7.71 by:

- a. Revising paragraph (c)
- b. Removing paragraphs (d), and (e).
- c. Redesignating paragraph (f) as paragraph (a).
- d. Redesignating paragraph (g) as paragraph (d).

The revisions to read as follows:

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(c) *Commercial vehicles.* Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, commercial vehicles are authorized to use the portions of U.S. Highway 209 located within the Delaware Water Gap National Recreation Area in accordance with applicable law. The Superintendent will provide notice to the public about rules related to commercial vehicles, including the requirements of a fee and permit program, using the methods set forth in § 1.7 of this chapter.

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Andrea Travnicek
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks
Exercising the Authority of the Assistant Secretary
for Fish and Wildlife and Parks.
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